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Th6a

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APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....**A-3-SCO-02-095, Corrigan SFD**

ApplicantPatrick & Jill Corrigan

AppellantJohn Chapin

Local governmentSanta Cruz County

Local decision.....Approved with Conditions (October 4, 2002)

Project location.....462 Quail Drive in the Bonny Doon area of north Santa Cruz County.

Project descriptionConstruct a two-story, 2,391 square foot single family residence with a garage, septic system and water tank on a 1.35 acre parcel designated and zoned for rural residential use.

File documentsSanta Cruz County Certified Local Coastal Program (LCP); Santa Cruz County Application File 01-0074.

Staff recommendation**No Substantial Issue**

Summary of staff recommendation: Santa Cruz County approved a proposal to construct a 2-story, approximately 2,400 square foot single-family residence on a 1.35 acre parcel located along Quail Drive roughly 4 miles inland from the shoreline in the mountainous Bonny Doon area of north Santa Cruz County. The Appellant alleges that the County decision was inconsistent with the LCP because it does not adequately protect the wetland and stream resources that exist on the subject property, and that are part of a larger natural stream system extending off-site.

Although not fully articulated by the County in their approval, the fundamental reason that residential development was approved at this site was to avoid a takings of private property. Clearly, as the Appellant correctly indicates, this site is constrained for development by the presence of an on-site stream and wetland system within which development is prohibited. When the wetland buffer required by the LCP is also applied, the entire site is either wetland, stream, or wetland buffer area that would otherwise preclude development. Instead of denying the development, the County minimized its impact by siting the development as far away from the sensitive resources as possible. Ultimately, the proposed development is not located within the wetland or the stream, is not located within the required stream buffer, but would be located within the required 100 foot wetland buffer (with the house roughly 30 feet from the delineated edge of the wetland itself). The County LCP allows lesser wetland buffers subject to certain findings and criteria that apply to this type of situation.



California Coastal Commission

March 2003 Meeting in San Luis Obispo

Staff: D.Carl Approved by:

A-3-SCO-02-095 Corrigan SFD stf rpt 3.6.2003.doc

Staff believes that the Appellant raises valid issues. And Staff further believes the County's exception findings in this case raise other procedural issues. However, those issues do not rise to the level of substantial issues in terms of this project's conformance with the LCP. The project that would be the most protective of resources on and off-site in this instance is no project at all. However, a denial cannot be sustained because of the property owner's constitutional rights to a reasonable use of their property. In such instances, the LCP requires that a balance be struck. The approved project has avoided the sensitive resources on site, and has been sited to ensure that the resources are buffered to a reasonable degree by tucking the development envelope near the road and in the corner of the property furthest away from the site's sensitive resources. The approved residence is of average size compared to others in the same general vicinity, including the Appellant's residence on the neighboring property. Although a smaller residence, pushed even further towards Quail Drive would somewhat increase the wetland buffer, it would require removal of additional significant trees, potentially increase grading due to slope differences at the road edge, and push the development further into the Quail Drive viewshed. It does not appear that the minor additional wetland buffer distance that could be gained in such a scenario would balance out those impacts, and wouldn't be as respective of the LCP's takings policies.

In sum, the County-approved project has struck a reasonable balance between competing LCP policies designed to both protect resources and to respect constitutional private property rights. This is a minor residential project with minor impacts in relation to existing overall impacts from existing development in this area, for which the County's decision was adequately supported by the facts of the case. By definition, the exception made in this case is not precedential because it was based upon the site specific set of facts and a potential takings. Staff does not believe that there would be a significantly different outcome were the Commission to take jurisdiction over this permit. Thus, Staff recommends that the Commission find that no substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP and decline to take jurisdiction over the coastal development permit for the project.

Report Contents

	page
1. Appeal of Santa Cruz County Decision	3
A. Santa Cruz County Action.....	3
B. Appeal Procedures	3
C. Appellant's Contentions	4
D. 49-Day Hearing Requirement.....	4
2. Staff Recommendation on Substantial Issue.....	5
Recommended Findings and Declarations	5
3. Project Description	5
A. Project Location.....	5
B. County Approved Project.....	7
4. Substantial Issue Findings	7
A. Policies Cited by Appeal	7
B. Analysis of Consistency with Cited Policies.....	8
C. Substantial Issue Conclusion	17



5. Exhibits

Exhibit A: Location Map

Exhibit B: County-Approved Site Plans and Elevations

Exhibit C: Annotated Site Plan with Setbacks Noted

Exhibit D: Adopted Santa Cruz County Staff Report, Findings, and Conditions

Exhibit E: Appeal of John Chapin

Exhibit F: Selected Relevant LCP Policies

Exhibit G: RWQCB and County Environmental Health Septic System Sign-offs

1. Appeal of Santa Cruz County Decision

A. Santa Cruz County Action

On October 4, 2002, the Santa Cruz County Zoning Administrator approved the project subject to multiple conditions (see exhibit D for the County's adopted staff report, findings and conditions on the project). The Zoning Administrator's approval was not appealed locally (i.e., to the Planning Commission or to the Board of Supervisors).¹ Notice of the Zoning Administrator's action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on October 30, 2002. The Coastal Commission's ten-working day appeal period for this action began on October 31, 2002 and concluded at 5pm on November 14, 2002. One valid appeal (see below) was received during the appeal period.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because of the presence of the on-site wetland and stream.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

¹ Normally local appeals must be exhausted before an appeal can be made to the Coastal Commission. In Santa Cruz County's case, the appeals process is that Zoning Administrator decisions can be appealed to the Planning Commission, and Planning Commission decisions can be appealed to the Board of Supervisors (and the Board can also independently elevate an item to the Board for consideration). However, because Santa Cruz County charges a fee for local coastal permit appeals, aggrieved parties can appeal such decisions directly to the Commission and circumvent the local appeal process. Since the appeal in this case is of a Zoning Administrator decision, the Appellant has availed himself of the direct appeal route.



Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not so located and thus this additional finding need not be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

C. Appellant's Contentions

The Appellant generally contends that the County's approval is inconsistent with the LCP because it does not adequately protect the wetland and stream resources on the subject site for habitat and, in the case of the stream, water supply purposes. The Appellant generally concludes that development should not be allowed on the subject site and asks the Commission to take jurisdiction over the CDP and deny development at this site. Please see exhibit E for the Appellant's complete appeal document.²

D. 49-Day Hearing Requirement

Pursuant to Section 30621 of the Coastal Act, an appeal must be set for hearing no later than 49 days after the date on which the appeal is filed with the Commission (since this appeal was filed on November 14, 2002, the 49th day was January 2, 2003). In this case, and at Commission staff's request, the Applicant (on November 20, 2002) waived his right to a hearing within 49 days to allow the County to prepare its administrative record, to allow the Appellant to better organize his appeal allegations, and to allow for Commission staff to prepare a staff recommendation based on that information.

² Note that, after submitting his original appeal, the Appellant subsequently reorganized his reasons for appeal into a summary document with attachments that was received by the Commission December 23, 2002; the Appellant's summary document represents his reasons for appeal and is shown in exhibit E. Please note that, other than selected relevant map and petition attachments, the Appellant's attached materials have not been duplicated here due to the large number of pages submitted. These additional materials are available for review at the Commission's Central Coast District Office and will be available for review at the Commission's March 6, 2003 meeting (i.e., the day that this item is scheduled to be heard).



2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. *I move that the Commission determine that Appeal Number A-3-SCO-02-095 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

Staff Recommendation of No Substantial Issue. *Staff recommends a **yes** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

Resolution To Find No Substantial Issue. *The Commission hereby finds that Appeal Number A-3-SCO-02-095 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program.*

Recommended Findings and Declarations

The Commission finds and declares as follows:

3. Project Description

A. Project Location

The proposed project is located in the mountainous Bonny Doon area that is inland of Santa Cruz County's rugged north coast. See exhibit A for illustrative project location information.

Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to the San Mateo County line along the Pacific Ocean. The County includes a wealth of natural resource systems within the coastal zone ranging from mountains and forests to beaches and lagoons and the Monterey Bay itself. The Bay has long been a focal point for area residents and visitors alike providing opportunities for surfers, fishermen, divers, marine researchers, kayakers, and boaters, among others. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the



Monterey Bay National Marine Sanctuary – the largest of the 12 such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the California Coastal Management Program has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current census estimates indicating that the County is currently home to over one-quarter of a million persons.³ This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for parks and recreational areas. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and many closer than that, coastal zone recreational resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational areas and visitor destinations. With Santa Cruz County beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the vast population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

Bonny Doon Area

The proposed development is located in Bonny Doon. Bonny Doon is a mountainous rural area on Santa Cruz County's north coast located inland of the shoreline. Much of the greater Bonny Doon area remains relatively undeveloped, and relatively undisturbed. There are, however, pockets of development, some more isolated than others, that are developed at low rural residential densities. The subject site is in the midst of one such rural residential subdivision.

Proposed Development Site

The project is located on Quail Drive in Bonny Doon, roughly 4 miles inland and northwest from the shoreline at Davenport. Quail Drive is a rural country road that loops between Martin Road and Pine Flat Road, and is developed on either side with residences on large-lot (generally an acre or so) properties heavily framed by mature trees and other vegetation. It is a very low intensity, rural residential community.

The vacant 1.35 acre (roughly 60,000 square foot) site is undeveloped, heavily vegetated, and is mostly covered by a riparian woodland community that includes an unnamed feeder stream that is a tributary to a larger tributary that ultimately connects into the main stem of Mill Creek (that parallels Pine Flat Road roughly half a mile to the west). The site slopes gently away from Quail Drive, with the more sensitive habitat portions of the property located on that portion of the site that are furthest from Quail Drive. The site, like those surrounding it that are developed with residences, is both designated in the LUP and zoned Rural Residential (RR).

See exhibit A for project location, including parcelization in the immediate vicinity. See exhibit B for the

³ Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for the 2000 census indicate that over 255,000 persons reside in Santa Cruz County.



approved site plan showing the stream and wetland in relation to the subject parcel, and exhibit C for an annotated site plan with buffer distances identified.

B. County Approved Project

The County approved a two-story, 2,391 square foot residence on that portion of the 1.35 acre site nearest to Quail Drive. The house would be constructed on an engineered slope incorporating a curtain drain system nearest to Quail Drive to address loose soils encountered on the site. Water to serve the site would be via an existing shared well on the property opposite Quail Drive, with a water storage tank constructed on the subject property. Wastewater would be discharged via a septic system.

The County approval includes a series of protections for the identified wetland/riparian area on the site. These include requirements for removal of non-native and invasive plant species on the entire site (both initially and over the long-term), vegetating disturbed area with appropriate native species, installing split-rail fencing at the habitat boundary (to allow wildlife through passage but to otherwise preclude disturbance), BMPs to protect habitat resources during construction, and a deed restriction prohibiting disturbance within the demarked habitat area.

The County approval also includes requirements for the applicant to acknowledge and take responsibility for the geologic hazards on the site.

See exhibit B for County-approved site plans, and exhibit D for the adopted County staff report, findings, and conditions approving the project.

4. Substantial Issue Findings

A. Policies Cited by Appeal

The Appellant's contentions generally raise questions regarding whether the approved project adequately addresses LCP policies relating to the protection of wetland and stream resources on the subject site for habitat and, in the case of the stream, water supply purposes. The Appellant's summary appeal document includes the text of the LCP policies that he claims are not adequately addressed by the County's action (see exhibit E).⁴

In general, and in addition to the policies cited by the Appellant, the County's LCP includes a large number of policies that could be read to apply to the proposed project site. Part of the reason for this is because the range of coastal resources involved (i.e., wetland, stream, water supply, etc.), and part of the reason is because of the way the certified LCP is constructed where there are a significant number of policies within each identified issue area, and then other policies in different LCP issue areas that also

⁴ Note that some of the policies cited in the Appellant's document are not LCP policies, but rather are General Plan policies (i.e., General Plan Policies 7.23.1, 8.1.3, 8.2.2, 8.6.1, 8.6.2, and 8.6.5). That said, the LCP generally includes policies similar in intent to the cited General Plan policies.



involve still other issue areas (e.g., habitat policies that include water supply requirements, and vis versa). In terms of habitat resources, there are also two zoning chapters that include requirements for protecting streams, riparian corridors, and ESHA. Each of these policies is not cited verbatim here as to do so would involve replicating a large body of the LCP itself. These LCP policies generally require that these resources be avoided, and that adequate buffers from them are maintained. The LCP also includes an exception mechanism to allow for reduced buffers, and includes policies for balancing resource protection against private property rights when takings issues are engendered.

In sum, the LCP designates the on-site wetland and stream resources as both Sensitive Habitat and ESHA as that term is understood within a Coastal Act context (LUP Policy 5.1.2(i) and 5.1.3, IP Chapter 16.32). The LCP requires that development be set back a minimum of 100 feet from the wetland (IP Section 16.32.090(A)(11)) and designates this 100 foot setback area itself as a riparian corridor (LUP Policy 5.2.1 and IP Chapter 16.30) to which an additional 10 foot setback is required (LUP Policy 5.2.4); a total required minimum setback area of 110 feet. The LCP protects the water quality (LUP Objectives and Policies 5.4, 5.5, 5.6, and 5.7 et seq) of the on-site unnamed tributary stream (that ultimately flows to Mill Creek) and requires a 50 foot development setback from it (IP Section 16.30.030 and 16.30.040) to which an additional 10 foot setback is required (LUP Policy 5.2.4); a total required minimum setback area of 60 feet. For septic systems specifically, a 100 foot setback from the stream is required (IP Chapter 7.38). Exceptions to riparian and sensitive habitat requirements are via specific findings (IP Section 16.30.060 and 16.32.100). In addition to the specific exception policies, the LCP also directly acknowledges the balancing necessary where takings are an issue (LUP Chapter 1, Policies 5.1.3(c), and 5.1.6). See exhibit F for selected relevant LCP policies.

B. Analysis of Consistency with Cited Policies

The Appellant's contentions can be broadly categorized as stream and wetland protection contentions, with a subset related to the integrity of stream water supply. The first section below (i.e., "1. By General Issue Area") is focused on these general appeal issue areas. The second section below (i.e., "2. By Appeal Summary") builds upon the first section and includes additional response directly to the points as raised in the Appellant's summary appeal document, and in the same order (see appeal document in exhibit E); the headings correspond to the LCP objectives and policies cited in the Appellant's summary appeal document.⁵

As detailed below, the appeal does not raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

1. By General Issue Area

Stream Setback

⁵ Note that the Appellant's summary appeal document is not generally structured to show how the project is inconsistent with the cited policies, but rather is more observational in nature with a more limited link specifically to the policy text (and the requirements of it). Thus, the analysis in the second section is generally more limited to issues raised by the observations.



All development is sited outside of the LCP-required 60 foot stream setback. Septic system development is sited outside of the LCP-required 100 foot stream setback. The development thus maintains the LCP-required stream buffers and the Appellant's contentions do not raise a substantial issue on this point. See annotated site plan in exhibit C.

Wetland Setback

The approved residence would be located within about 30 feet of the wetland, with the proposed building pad extending to the wetland's edge. See annotated site plan in exhibit C.

As stated above, the LCP required wetland setback is 110 feet. The LCP allows for exceptions to be made to wetland setback requirements pursuant to IP Section 16.32.100. Because the first 100 feet of the wetland setback is defined as riparian corridor, additional riparian exception findings must also be made pursuant to IP Section 16.30.060.

The County made the findings required pursuant to IP Section 16.30.060 (riparian exception), but they did not explicitly make the exception findings pursuant to IP Section 16.32.100 (sensitive habitat exception) (see County findings in exhibit D). The sensitive habitat exception findings implicitly address the question of takings of private property (implementing the more explicit takings references in the LUP cited above). Though implied in the riparian exception and other coastal permit findings, the County didn't include a classic takings analysis as such analysis is generally understood by the Commission.

That said, the findings made by the County effectively constitute the necessary exception findings in this case, particularly when the issue of takings is also considered. All of the site is either wetland, or wetland buffer/setback (see exhibits B and C). The approved development is for a modest, roughly 2,400 square foot single family residence on a legal lot that is designated and zoned for residential use. The approved residence is of an average size compared to others in the same general vicinity (that is similarly developed), including the Appellant's residence on the neighboring property. The development envelope has been located as far from the on-site sensitive resources (wetland and stream) as reasonably possible, tucked up towards the corner of the site nearest to Quail Drive itself. Although a smaller residence, pushed even further towards Quail Drive would increase the wetland buffer, it would require removal of additional significant trees, potentially increase grading due to slope differences at the road edge, and push the development further into the Quail Drive viewshed. It does not appear that the minor additional wetland buffer distance that could be gained in such a scenario would balance out those impacts, and wouldn't be as respective of the LCP's takings policies.

Thus, although the lack of explicit LCP required sensitive habitat exception findings raises a procedural issue, the riparian exception findings that were made by the County effectively constitute the required sensitive habitat exception findings when the issue of takings is also considered, and the lack of a separate set of additional findings does not change the project that was approved. Clearly, the same types of findings, and the takings considerations, would have led to the same project being approved by the County. This does not raise a substantial LCP conformance issue.

Site Wastewater and Runoff



LCP policies protect the on-site stream, and the downstream resources that it flows into, from polluted runoff and wastewater, including both sewage effluent and general site runoff. The residence approved would generate the same types of runoff and wastewater that are typically associated with rural development in the County. This includes subsurface percolation of septic effluent (because sewer services don't exist in this rural area of the County), runoff from driveways, and runoff from ornamental landscaping.

In terms of the septic system approved, and as with all such proposed development in rural Santa Cruz County that includes septic systems, the County Environmental Health Department assessed the septic system proposed. Based on the site specific issues and constraints, including those associated with the sandy soils and the watercourse here, Environmental Health ultimately recommended a septic system that included enhanced treatment (i.e., one that would result in cleaner effluent than would be expected from a standard septic system). The approved project includes the recommended septic system. The Regional Water Quality Control Board (RWQCB), in response to a letter of concern from the Appellant regarding the septic system, likewise approved the septic system for this site. RWQCB concluded that "the proposed system will be as (or more) protective of water quality than a conventional septic/mound system." See exhibit G for the Environmental Health and RWQCB letters to the Appellant on this issue. The septic leach field has been located as far from the wetland riparian area as possible, and nearest to Quail Drive (see site plan in exhibits B and C).

In terms of the runoff from the impervious areas of the site, all site drainage in this case is to be collected, and would be filtered through two percolation pits prior to discharge to reduce the potential for any downstream sedimentation or water quality degradation (see exhibit B).

In terms of the runoff from pervious areas of the site, there would be one small patio area with ornamental plantings, and the remainder of the site would be either left undisturbed (other than the required removal of invasive plant species) or, if disturbed (e.g., the building pad itself), vegetated with drought tolerant native species. Any adverse runoff and/or infiltration at the small ornamental planting area at the patio (due to fertilizers, herbicides, etc.) would be extremely minor and would be expected to have a less than significant effect on water quality. The revegetated areas should likewise have an insignificant effect on water quality. And finally, the vast majority of the site, 90% or so, would be left alone, and thus its effect on water quality would be unchanged.

Standard measures would be taken during construction to protect the stream and wetland from runoff.

In sum, the proposed project does not result in adverse runoff and wastewater more than any other similarly sized residential development, of which there are many in the immediate vicinity (including the Appellant's neighboring residence). This includes general runoff and subsurface septic percolation. In terms of the septic system, the County approved system was evaluated and approved by both County Environmental Health (the entity to which the RWQCB has generally delegated authority for making decisions on residential septic systems in the County) and the RWQCB; both of these agencies determining that the approved system would likely be more protective of downstream resources than a standard septic system.



The Appellant's contentions in this area do not raise a substantial issue.

2. By Appeal Summary⁶

Note that the Appellant's summary appeal document is not generally structured to show how the project is inconsistent with the cited policies, but rather is more observational in nature with a more limited link specifically to the policy text (and the requirements of it) that he cites. Thus, and by extension, the analysis in this section is generally more limited to issues raised by the observations.

5.8.a

The Appellant is correct that the site is within a designated primary groundwater recharge area. However, this designation is hardly unique inasmuch as most all of the mountain Bonny Doon area is within the mapped groundwater recharge area. Likewise, as the Appellant indicates, Mill Creek is designated as a critical water supply stream per the LCP. The main stem of Mill Creek is located roughly one-half mile west of this site, and the unnamed stream on the site is a tributary to a larger tributary that ultimately connects into the main stem of Mill Creek. More importantly, however, these designations inform but do not alter the fundamental balance being struck with this project (related to resource protection versus private property rights; see also discussion above).

5.6.2

Note that the Appellant indicates that a well would be constructed on the Applicant's parcel. This is incorrect. The County approval allowed for the construction of a water tank on the Applicant's parcel. The existing shared well on the opposite side of Quail Drive from this site would be the water source (see site plan in exhibit B).

Note too that the cited LCP policy addresses water diversion. The approved project does not include a "water diversion" as that term is typically understood. Rather, the water source for the project would be the existing shared well on the opposite side of Quail Drive.

5.7.1

Policy 5.7.1 prohibits development adjacent to wetlands and streams where impacts cannot be fully mitigated. Note that development adjacent to streams and wetlands is addressed by an interwoven series of LCP policies that establish required setbacks and appropriate water quality control measures for development sites, as discussed above. Such policies, and others cited in this report, need to be read together. Thus, the outright development prohibition in Policy 5.7.1 must be understood in this context.

The Appellant cites subdivision density requirements. Note that this is not a subdivision. This is an existing parcel from a pre-Coastal Act subdivision. Thus, the cited land division density requirements do not apply.

⁶ Again, this section builds upon the previous findings and includes additional response directly to the points as raised in the Appellant's summary appeal document, and in the same order (see appeal document in exhibit E); the headings correspond to the LCP objectives and policies cited in the Appellant's summary appeal document.



5.7.2

Policy 5.7.2 describes the requirement for a 100 foot septic system setback from streams. The approved project's septic system is located over 100 feet away from the stream on this site (see site plan in exhibits B and C). Further, per the LCP, development must be kept at least 60 feet from the on-site stream (a 50 foot buffer plus a ten foot setback from the buffer). In this case, the closest proposed development is the water tank that would be just over 60 feet from the stream. The septic system would be about 100 feet away, and the house itself would be about 150 feet away from the stream. These setbacks all meet the LCP's minimum setback requirements.

The Appellant contends that an "intermittent" stream exists at the property line between his property and the subject site (i.e., along the southern boundary of the subject site; see exhibit B for site plan). Other than the Appellant's assertion, there is no evidence in the file to indicate that a separate intermittent stream exists on the Appellant's neighboring property to which the proposed project must also be set back from. Commission staff field investigation did not identify stream indicators in this area.

The LCP defines an "intermittent" stream as those: (1) so identified by USGS mapping (not the case here); or (2) field determined to have either significant waterflow 30 days after the last significant storm, or having a well-defined channel free of soil and debris (IP Section 16.30.030). County and Commission staff field investigation did not identify indicators of an intermittent stream where so identified by the Appellant. The LCP defines an "ephemeral" stream as a watercourse that flows only in direct response to precipitation. Staff field work likewise did not identify ephemeral stream indicators along the property line either.

In any case, the LCP required setback from an intermittent stream, were there to be an intermittent stream, is 30 feet. The LCP required setback from an ephemeral stream, were there to be an ephemeral stream, is 20 feet. The approved project is set back 20 feet from the neighboring property line in the corner of the site nearest to Quail Drive and furthest from the clearly identified stream and wetland on the northern side of the site. Even were there to be a stream at this location as alleged, the approved residence would either be set back as far as required by the LCP (if ephemeral), or would be just within that setback (if it were deemed an intermittent stream). In either case, in light of the fact that there doesn't appear to be any kind of watercourse in this location, and also because of the takings balance that applies to this site, this would not raise a substantial LCP conformance issue in this case.

5.7.3, 5.7.4, and 5.7.5

The Appellant argues that site drainage would not be controlled. However, contrary to the Appellant's assertion, all site drainage in this case is to be collected, and would be filtered through two percolation pits prior to discharge to reduce the potential for any downstream sedimentation. In addition, as detailed above, runoff impacts would not be expected to be greater than those from the surrounding, largely built-out, rural residential neighborhood.

Programs a, b, f, g and i



The cited LCP programs define important concepts for protecting resources. However, they are also directed more towards overall watershed planning and analysis as opposed to individual project analysis. As such, their relevance in this individual application review, other than their contribution to the overall intent of the LCP as read as a whole, is more limited.

5.8.3

Policy 5.8.3 prohibits any land use in a primary groundwater recharge area that allows the percolation of pollutants into groundwater. When read in a vacuum, Policy 5.8.3 would essentially prohibit development in all of north Santa Cruz County, because most all of the mountainous Bonny Doon area is mapped as “primary groundwater recharge” and almost all development allows for some infiltration of runoff that could contain pollutants, including through percolation of septic effluent. Again, however, the applicable LCP policies must be read together. As stated previously, the most protective project from a strictly coastal resource protection standpoint would be no project. However, there are also takings considerations. In addition, there are also project design and buffering considerations for resource protection that apply, and were applied. It should be noted again that the subject site is within a developed rural residential neighborhood, for which the LCP designates and generally allows similar development, albeit at a low-intensity, at this location.

5.8.4

The Appellant contends that the project does not include provisions for on-site detention of runoff. Again, as stated above, all site drainage in this case is to be collected, and would be filtered through two percolation pits prior to discharge to reduce the potential for any downstream sedimentation. Other runoff impacts would be expected to be less than significant.

5.8.5

Policy 5.8.5 is directed toward projects that are “developing groundwater resources;” that is not the situation in this case. Further, the water system to be used as a water source in this case was evaluated and deemed adequate by the County Environmental Health Department to ensure a reliable water supply as required by the LCP.

5.11

Objective 5.11 identifies preservation of open space as an LCP objective. Again, the LCP must be read as a whole. While denying development in this case would be most protective of open space resources, such potential action must be balanced against takings considerations (see previous discussion above)

7.21

The Appellant indicates that the septic effluent that will be discharged will not be clean.⁷ As a general rule, septic effluent is not “clean.” Rather, it is filtered and treated through engineered means and then allowed to percolate (subsurface) into soils, where additional biofiltration is expected. As detailed

⁷ Note that septic systems do not “discharge” effluent, as that term is typically understood in a water quality sense. Rather, the effluent is leached into the ground where it percolates.



above, County Environmental Health and RWQCB both approved the septic system in this case as a system more protective of resources than would be a standard septic system.

7.21.1

The Appellant observes that there may potentially be three alternative septic systems in this general area serving residential development, and that impacts from them could be severe. This contention does not raise a substantial issue for several reasons. First, the LCP allows for the use of “alternative septic systems.” Second, and by definition, an alternative system “means an individual sewage disposal system which uses nonconventional technology for enhanced effluent treatment and/or disposal” (LCP Chapter 7.38). In other words, these “alternative” systems are meant to be more protective of coastal resources rather than less. Third, the County required the “alternative” septic system in this case in response to the site’s sandy soils (and correspondingly fast percolation rates). Because of the soils, and to more fully protect the stream and wetland, the County required a septic system with enhanced treatment capabilities (i.e., an alternative system). And fourth, any alternative septic system, including that approved here and those to which the Appellant refers in the near vicinity, must be approved by County Environmental Health and RWQCB. The RWQCB and County Environmental Health both approved this system, indicating that it would likely be more protective of resources than would be a standard system.

Again, the site is designated and zoned for rural-level residential development. It is outside of the reach of urban sewage services, in part by LCP design to maintain stable urban-rural boundaries. Such rural residential development, by definition, requires septic systems. Further, almost all of Bonny Doon is in the primary groundwater recharge area, and is on septic systems. The approved project is residential development, on an existing rural residential property, in an existing residentially developed neighborhood. The County approved septic system would be more, rather than less, protective of resources, and has been approved by both of the required water quality and environmental health agencies. The Appellant’s contentions in this regard do not raise a substantial issue.

6.2.1 & 6.2.2

The Appellant observes that the site has geotechnical constraints, and contends that the County approval did not include a hazards assessment related to these. He indicates that there are no provisions for secondary containment on the septic system. As required, the approved project included a geologic hazards assessment. The parameters of the development, and its final design and structural dimension, were heavily influenced by this assessment. This geologic hazards assessment did not identify the need for some type of secondary containment in the case of liquefaction associated with the septic system, and it doesn’t appear from the file that this septic system, or more particularly the holding tank, is any more susceptible to rupture during an earthquake event than others in this vicinity or in the County.

6.2.4

The Appellant contends that there is no evidence that the 300 cubic yards of fill to be imported to the site will not be contaminated, and the effect of the fill’s permeability in relation to the site soils is not understood and could have an adverse impact on the larger Primary Groundwater Recharge that occupies most all of mountainous north Santa Cruz County. Although the approved project was not conditioned for



same, it is generally accepted engineering practice for fill material to be “clean” materials free of contamination. As to the fill soils’ relative permeability, it is unlikely that the composition of the fill material would have a significant impact on the Primary Groundwater Recharge area given the Recharge area’s enormous size in relation to the area of grading on the project site.

6.2.6

The Appellant contends that the entire site is unstable. Clearly, the site has stability issues, but there is no evidence that the portion of the site in which development would take place is more unstable than elsewhere on the site. In addition, engineering measures have been designed into the project to address those issues. With geologic hazard conditions being relatively the same across the site, the decision on where best to site development (if development must be contemplated to avoid a takings) is driven more by the resource concerns than the geotechnical concerns (and thus the approved site disturbance area has been located as far from on-site resources as possible). The County required the Applicant to record a deed restriction recognizing the geologic hazards and assuming the risk for choosing to develop in the face of them.

6.2.7

Policy 6.2.7 prohibits leach fields in areas subject to landsliding unless it is demonstrated that such placement will not affect slope stability. Other than the identified risk should an earthquake affect this site, the underlying geotechnical reports do not identify the leach field area as subject to landsliding.

6.3.2

The Appellant contends that the grading associated with the project does not contain adequate measures to protect soil and water resources. However, grading operations will be controlled by normally accepted construction BMPs.

6.3.11

The Appellant contends that the Applicant is being rewarded for clearing of the site that took place in the mid-1990s that was red-tagged by the County. The County subsequently resolved the red-tag issues in early 1996. Although the red-tag background provides context in this case, it does not alter the basic reason that development was approved here. The balance being struck is resource protection versus a private property owner’s right to develop property. It is this fundamental balance that allows for development on a constrained site such as this, notwithstanding any previous vegetation removal that may have occurred historically. In addition, the County’s consulting biologist visited the site in early 2002 and delineated the applicable wetland and riparian resources at that time (as opposed to relying on a delineation from the mid-1990s after some amount of vegetation was apparently removed).

6.6, 7.18b, 7.18.3

The Appellant alleges that water will be taken away from Mill Creek and “replaced with septic effluent and urban runoff.” Again, see previous discussions on LCP balancing. Moreover, it is noted again that this is an existing developed rural residential area. Ultimately, and based on current case law, it must be



assumed that existing private property is going to be developed to densities similar to that that exists in the surrounding areas. The subject parcel is not different in this regard than others similarly located relevant to Mill Creek. The percolated effluent and other runoff from it likewise should be similar to surrounding developed residential properties (see also runoff discussion above), and the project will not divert water from Mill Creek.

7.23.1

Policy 7.23.1, directed to drainage improvements, is not an LCP policy (although other similar LCP policies exist and apply to this site). The Appellant alleges that on-site retention and percolation of runoff is not part of the project. As detailed above, all site drainage in the approved project is to be collected, and would be filtered through two percolation pits prior to discharge to reduce the potential for any downstream sedimentation.

8.1.3

Policy 8.1.3, generally directed to residential site development standards such as setbacks, is not an LCP policy (although other similar LCP policies exist and apply to this site). The Appellant contends that the approved project is excessive. However, the roughly 2,400 square foot residence and associated development is not excessive when compared relative to existing surrounding development in the Quail Drive rural residential subdivision, including the Appellant's existing residence adjacent to the site.

8.2.2

Policy 8.2.2, requiring compliance with environmental ordinances, is not an LCP policy (although other similar LCP policies exist and apply to this site). The Appellant alleges that there has not been a proper wetland delineation. The Appellant is correct that the Applicant did not submit a thorough wetland delineation with his application. That said, the County's consulting biologist subsequently delineated the wetland on the subject site and the County's approval was based on this delineation.

8.6.1

Policy 8.6.1, generally directed to the relationship of a parcel to the scale of structures it can support, is not an LCP policy (although other similar LCP policies exist and apply to this site). Again, the size and scale of the proposed development is not excessive when compared relative to existing surrounding development.

8.6.2

Policy 8.6.2, generally directed to residential site development standards such as setbacks, is not an LCP policy (although other similar LCP policies exist and apply to this site). The Appellant again alleges the existence of an intermittent stream on the property line between his property and the subject site. Again, other than the Appellant's assertion, there is no evidence in the file or in the field to indicate that a separate intermittent stream exists on the Appellant's neighboring property from which the proposed project must also be set back (see previous discussion in this point).



8.6.5

Policy 8.6.5, relating to the relationship of a structure to the natural landform, is not an LCP policy (although other similar LCP policies exist and apply to this site). The Appellant alleges that the approved residence is “gargantuan” compared to the “postage stamp” area that is developable in this case. Again, the size and scale of the proposed development is not excessive when compared relative to existing surrounding development (see also above).

Page 10

The “Alternative Septic System Ordinance” to which the Appellant refers is actually a subsection of LCP Zoning Code Chapter 7.38 regarding sewage disposal. As such, it is a part of the LCP, and not separate from it.

C. Substantial Issue Conclusion

The LCP clearly protects the wetland and stream resources associated with this project, through, among other things, requiring that resource areas be avoided, that development be set back from them, and that project design minimize impacts to them. In cases of special circumstances, and explicitly in cases where Constitutional takings issues are involved, the LCP dictates that an appropriate balance be struck between resource protection and private property rights.

Although not fully articulated by the County in their approval, the reason that residential development was approved at this site was to avoid a takings of private property. Clearly, as the Appellant correctly indicates, this site is constrained for development by the presence of an on-site stream and wetland system within which development is prohibited. When the wetland buffer required by the LCP is applied, the entire site is either wetland, stream, or wetland buffer area that would otherwise preclude development. Instead of denying the development, the County attempted to minimize its impact by siting the development as far away from the sensitive resources as possible. Ultimately, the proposed development is not located within the wetland or the stream, is not located within the required stream buffer, but would be located within the required 100 foot wetland buffer (with the house roughly 30 feet from the wetland itself). The County LCP allows lesser wetland buffers subject to certain findings and criteria that apply to this type of situation.

Although the Appellant’s appeal contentions are valid concerns, they do not raise substantial issues in terms of this project’s conformance with the LCP. Clearly, the project that would be the most protective of resources on and off-site in this instance is no project at all. However, a denial cannot be sustained against the property owner’s constitutional rights to a reasonable use of their property. In such instances, the LCP requires that a balance be struck. The approved project has avoided the sensitive resources on site, and has been sited to ensure that the resources are buffered to a reasonable degree by tucking the development envelope near the road and in the corner of the property furthest away from the site’s sensitive resources. The approved residence is of an average size compared to others in the same general vicinity, including the Appellant’s residence on the neighboring property. Although a smaller residence, pushed even further towards Quail Drive would increase the wetland buffer, it would require removal of additional significant trees, potentially increase grading due to slope differences at the road edge, and



push the development further into the Quail Drive viewshed. It does not appear that the minor additional wetland buffer distance that could be gained in such a scenario would balance out those impacts, and wouldn't be as respectful of the LCP's takings policies.

In sum, the County-approved project has struck a reasonable balance between competing LCP policies designed to both protect resources and to respect constitutional private property rights. This is a minor residential project with minor impacts in relation to existing overall impacts from existing development in this area, for which the County's decision was adequately supported by the facts of the case. By definition, the exception made in this case is not precedential because it was based upon the site specific set of facts and a potential takings. The Commission does not believe that there would be a significantly different outcome were the Commission to take jurisdiction over this permit.

Thus, the Commission finds that no substantial issue exists with respect to this project's conformance with the certified Santa Cruz County LCP and declines to take jurisdiction over the coastal development permit for the project.

